

Senate Engrossed House Bill

FILED

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SECRETARY OF STATE**

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CHAPTER 235

HOUSE BILL 2708

AN ACT

AMENDING SECTIONS 40-360.21, 40-360.22 AND 40-360.26, ARIZONA REVISED
STATUTES; RELATING TO UNDERGROUND FACILITIES.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 40-360.21, Arizona Revised Statutes, is amended to
3 read:

4 40-360.21. Definitions

5 In this article, unless the context otherwise requires:

6 1. "Abandoned" means no longer in service and physically disconnected
7 from a portion of the facility, or from any other facility, that is in use or
8 still carries service.

9 2. "Building official" means the AGENCY OR officer employed by a
10 political subdivision of this state and charged with the administration and
11 enforcement of a building code to regulate the quality, type of material and
12 workmanship of construction of buildings or structures.

13 3. "Careful and prudent manner" means conducting excavation in such a
14 way that when it is within twenty-four inches of the underground facility
15 located and marked by the underground facilities operator, by stakes, paint
16 or in some customary manner, the exact location is manually determined, and
17 the uncovered facility is supported and protected.

18 4. "Cross culverts or similar roadway drainage facilities" means
19 transverse drainage structures with both ends or openings visible and
20 includes INCLUDING box culverts, drainage pipes or other covered structures.

21 5. "Detectible underground location device" means any device that is
22 installed underground and that is capable of being detected from above ground
23 with an electronic locating device.

24 6. "Excavation" means any operation in which earth, rock or other
25 material in the ground is moved, removed or otherwise displaced by means or
26 use of any tools, equipment or explosives and includes, without limitation,
27 grading, trenching, digging, ditching, drilling, augering, boring,
28 tunnelling, scraping, cable or pipe plowing and driving.

29 7. "Implied easement" means any easement or right-of-way on private
30 property required to provide utility services by means of underground
31 facilities in property of the owner requesting such service.

32 8. "Inactive" means:

33 (a) That portion of an underground facility that is not in use but is
34 still connected to the facility, or to any other facility, that is in use or
35 still carries service.

36 (b) A new underground facility that has not been connected to any
37 portion of an existing facility.

38 9. "Installation records of an underground facility" means maps,
39 drawings, diagrams, surveys, schematics, illustrations, sketches or any other
40 depictions or descriptions of an underground facility that reflect the
41 location at the time of installation of the underground facility and any
42 surface extensions in a reasonably accurate manner.

1 10. "HOMEOWNERS' ASSOCIATION" HAS THE SAME MEANING PRESCRIBED IN
2 SECTION 33-2001.

3 ~~10-~~ 11. "Locator strip" means a type of detectible underground
4 location device that consists of a plastic or other durable material ribbon
5 containing a material capable of being detected from above ground with an
6 electronic locating device and color coded by type of underground facility.

7 ~~11-~~ 12. "Locator wire" means a type of detectible underground location
8 device that consists of a copper wire or metallic, conductive, noncorrosive
9 trace wire capable of being detected from above ground with an electronic
10 locating device.

11 ~~12-~~ 13. "One-call notification center" means an organization of owners
12 or operators of underground facilities that provides a telephone number
13 notification service for the purpose of receiving and distributing to its
14 members advance notifications from persons regarding planned excavations.

15 ~~13-~~ 14. "Person" means any individual, firm, joint venture,
16 partnership, corporation, association, HOMEOWNERS' ASSOCIATION, municipality,
17 governmental unit, department or agency and shall include any trustee,
18 receiver, assignee or personal representative thereof.

19 ~~14-~~ 15. "Routine road maintenance grading" means the routine grading
20 or resurfacing of the concrete, asphaltic or composite surface but not the
21 subbase of a roadway by the state or a political subdivision of the state for
22 the purpose of maintaining the surface condition of the road and includes
23 recovery of material from a borrow ditch.

24 ~~15-~~ 16. "Stakes, paint or in some customary manner" means marking the
25 location of an underground facility by the colors established by the
26 commission. These colors shall be restricted to the underground facility
27 location.

28 ~~16-~~ 17. "Underground facilities operator" means a public utility,
29 municipal corporation or other person having the right to bury underground
30 facilities in any public street, alley, right-of-way dedicated to the public
31 use or utility easement or pursuant to any express or implied private
32 property easement. Underground facilities operator does not include a
33 homeowner OR HOMEOWNERS' ASSOCIATION that owns a sewer facility in a public
34 street, alley, right-of-way dedicated to public use or utility easement.

35 ~~17-~~ 18. "Underground facility" means any item of personal property
36 that is buried or placed below ground for use in connection with the storage
37 or conveyance of water, sewage, electronic, telephonic, or telegraphic
38 communications, electric energy, oil, gas or other substances, and shall
39 include but not be limited to pipes, sewers, conduits, cables, valves, lines,
40 wires, manholes, attachments and those portions of poles and their
41 attachments below ground except cross culverts or similar roadway drainage
42 facilities and landscape irrigation systems of two inches in diameter or
43 less.

1 Sec. 2. Section 40-360.22, Arizona Revised Statutes, is amended to
2 read:

3 40-360.22. Excavations; determining location of underground
4 facilities; providing information; excavator
5 marking; on-site representative; validity period
6 of markings; liability for misuse of locate
7 requests; detectible underground locating devices;
8 civil penalty

9 A. A person shall not make or begin any excavation in any public
10 street, alley, right-of-way dedicated to the public use or utility easement,—
11 OR in any express or implied private property utility easement,— without
12 first determining whether underground facilities will be encountered, and if
13 so where they are located from each and every underground facilities operator
14 and taking measures for control of the facilities in a careful and prudent
15 manner.

16 B. Every underground facilities operator shall file with the
17 corporation commission the job title, address and telephone number of the
18 person or persons from whom the necessary information may be obtained. Such
19 person or persons shall be readily available during established business
20 hours. The information on file shall also include the name, address and
21 telephone number of each one-call notification center to which the
22 underground facilities operator belongs. Upon receipt of inquiry or notice
23 from the excavator, the underground facilities operator shall respond as
24 promptly as practical, but in no event later than two working days, by
25 CAREFULLY marking such facility with stakes,— OR paint or in some customary
26 manner. No person shall begin excavating before the location and marking are
27 complete or the excavator is notified that marking is unnecessary. If the
28 excavator consents, an underground facilities operator may notify the
29 one-call notification center that marking is unnecessary pursuant to a method
30 established by the one-call notification center. An underground facilities
31 operator may ~~delegate~~ ASSIGN any marking or notification obligations required
32 by this subsection to an agent or servant of the underground facilities
33 operator. An underground facilities operator may notify the excavator that
34 marking is unnecessary pursuant to any mutually agreeable method.

35 C. On a timely request by the underground facilities operator, the
36 excavator shall mark the boundaries of the location requested to be excavated
37 in accordance with a color code designated by the commission or by applicable
38 custom or standard in the industry. A request under this subsection for
39 excavator marking does not alter any other requirement of this section.

40 D. Except as otherwise provided in this section, in performing the
41 marking required by subsection B of this section, the underground facilities
42 operator of an underground facility installed after December 31, 1988 in a
43 public street, alley or right-of-way dedicated to public use, but not
44 including any express or implied private property utility easement, shall

1 locate the facility by referring to installation records of the facility and
2 utilizing one of the following methods:

- 3 1. Vertical line or facility markers.
- 4 2. Locator strip or locator wire.
- 5 3. Signs or permanent markers.
- 6 4. Electronic or magnetic location or tracing techniques.
- 7 5. Electronic or magnetic sensors or markers.
- 8 6. Metal sensors or sensing techniques.
- 9 7. Sonar techniques.
- 10 8. Underground electrical or radio transmitters.
- 11 9. Manual location techniques, including pot-holing.
- 12 10. Surface extensions of underground facilities.
- 13 11. Any other surface or subsurface location technique that is at least

14 as accurate as the other marking methods in this subsection and that is not
15 prohibited by the commission or by federal or state law.

16 E. Except as otherwise provided in this section, for an underground
17 facility other than one installed after December 31, 1988, in a public
18 street, alley or right-of-way dedicated to public use, in performing the
19 marking required by subsection B of this section, the underground facilities
20 operator may refer to installation or other records relating to the facility
21 to assist in locating the facility and shall locate the facility utilizing
22 one of the methods listed under subsection D of this section.

23 F. If an underground facilities operator is unable to complete the
24 location and marking within the time period provided by subsection B of this
25 section, the facilities operator shall satisfy the requirements of this
26 section by providing prompt notice of these facts to the excavator and
27 assigning one or more representatives to be present on the excavation site at
28 all pertinent times as requested by the excavator to provide facility
29 location services until the facilities have been located and marked. The
30 underground facilities operator shall bear all of its own costs associated
31 with assigning representatives. If representatives are assigned under this
32 subsection, the excavator is not responsible or liable for damage to or
33 repair of the underground facilities operator's underground facility while
34 acting under the direction of an assigned representative of the underground
35 facilities operator, unless the damage or need for repair was caused by the
36 excavator's negligence.

37 G. The marking required by subsection B of this section is valid for
38 fifteen days from the date of the marking, excluding Saturdays, Sundays and
39 other legal holidays. If the excavation will continue past the validity
40 period of the marks as provided by this subsection, the excavator shall
41 notify the underground facilities operator or an organization designated by
42 the underground facilities operator at least two days, excluding Saturdays,
43 Sundays and other legal holidays, before the end of the validity period. All
44 requests for facility markings and requests to extend the validity period of
45 the markings shall be for the purpose of excavating within the validity

1 period of the markings. An excavator that requests facility markings shall
2 limit the request to an area that can reasonably be excavated within the
3 validity period of the markings. A person who violates this subsection is
4 liable to the one-call notification center and to all affected underground
5 facilities operators for any resulting damages, costs and expenses.

6 H. Nothing in this section shall be construed to prevent an excavator
7 and an underground facilities operator from holding a preconstruction
8 conference regarding marking and location of underground facilities and
9 entering into a mutually agreeable written schedule or written arrangement
10 for satisfying the requirements of this section, except that this subsection
11 does not eliminate the excavator's obligation to notify the underground
12 facilities operator to locate and mark excavation sites under subsection B of
13 this section based on the actual construction schedule.

14 I. For abandoned and apparently abandoned underground facilities:

15 1. The underground facilities operator shall notify the excavator
16 whether the facility is active or abandoned. An inactive facility shall be
17 considered active for purposes of this subsection. This section does not
18 obligate any person to represent that an underground sewer facility in any
19 public street, alley, right-of-way dedicated to public use or utility
20 easement is abandoned if it was installed on or before December 31, 2005 and
21 it is not owned by an underground facilities operator of a sewer system.

22 2. For an underground facility abandoned after December 31, 1988 or
23 covered by installation records prepared under section 40-360.30, subsection
24 A, the underground facilities operator may not advise or represent to the
25 excavator that a facility or portion of a facility is abandoned unless the
26 underground facilities operator has verified, by reference to installation
27 records or by testing, that the facility or portion is actually abandoned and
28 not merely inactive. For all other abandoned or apparently abandoned
29 underground facilities, each one-call notification center shall establish a
30 method of providing personnel from an underground facilities operator
31 qualified to safely inspect and verify that the facility is abandoned or
32 active and a method for reimbursing the verifying underground facilities
33 operator for the costs incurred. The reimbursement method may not include
34 any charge or expense to the excavator. For the purposes of this article, an
35 underground facilities operator shall not represent that an underground
36 facility is abandoned unless the facility has been verified as abandoned
37 pursuant to this subsection.

38 3. For the purposes of this article, if an excavator encounters an
39 apparently abandoned underground facility, the excavator shall not treat the
40 underground facility as abandoned until the excavator has received
41 notification that the underground facility is abandoned pursuant to paragraph
42 1 of this subsection or has notified the underground ~~facility~~ FACILITIES
43 operator of the apparent abandonment and has received verification of
44 abandonment pursuant to paragraph 2 of this subsection.

1 J. All new and active underground facilities installed in any real
2 property after December 31, 2005 shall be installed with a detectible
3 underground location device unless the facility is capable of being detected
4 from above ground with an electronic locating device OR THE FACILITY IS
5 INSTALLED WITHIN SINGLE FAMILY RESIDENTIAL PROPERTY AND IS BENEATH A POOL,
6 PERMANENT POOL DECKING THAT IS LESS THAN FORTY EIGHT INCHES FROM THE POOL OR
7 A PERMANENT BUILDING. A person who violates this subsection is subject to a
8 civil penalty in an amount not to exceed five thousand dollars. The building
9 official shall administer and enforce this subsection for all underground
10 facilities except those that are installed for a public utility or municipal
11 corporation. Any penalties received by the building official shall be
12 deposited in the municipality's or political subdivision's general fund, as
13 applicable. EXCEPT AS REQUIRED BY A CITY, TOWN OR COUNTY BUILDING CODE OR
14 OTHER RELATED CODE, FOR PURPOSES OF LOCATING AN UNDERGROUND FACILITY A
15 BUILDING OFFICIAL OR POLITICAL SUBDIVISION SHALL NOT COMPEL THE INSTALLATION
16 OF ONE OR MORE CLEAN-OUTS ON ANY UNDERGROUND SEWER FACILITY THAT IS OWNED BY
17 ANOTHER PERSON AND SERVES ONE CUSTOMER WHERE ANY PORTION OF THE UNDERGROUND
18 SEWER FACILITY IS IN ANY PUBLIC STREET, ALLEY, RIGHT-OF-WAY DEDICATED TO
19 PUBLIC USE, PRIVATE PROPERTY OR EASEMENT.

20 K. Nothing in this section shall be construed as prohibiting the use
21 of warning tape, warning markers or any other warning device by the
22 underground facilities operator.

23 L. For every underground facilities operator of a sewer system:

24 1. For the purposes of this article, an underground facilities
25 operator of a sewer system is responsible for locating and marking the
26 underground sewer facilities owned by another person pursuant to subsection B
27 of this section if those underground facilities are installed after December
28 31, 2005 and are in any public street, alley, right-of-way dedicated to
29 public use or utility easement.

30 2. In performing the marking required by this subsection, the
31 underground facilities operator of the sewer system shall locate the facility
32 by referring to installation records of the facility and by using one of the
33 methods listed in subsection D of this section.

34 3. This subsection does not obligate an underground facilities
35 operator of a sewer system to locate and mark the underground sewer
36 facilities owned by another person if the customer receiving sewer service
37 from the underground sewer facility refuses to grant permission to the
38 underground facilities operator of a sewer system to access the real property
39 for the purpose of ascertaining the location of the underground sewer
40 facility in any public street, alley, right-of-way dedicated to public use or
41 easement.

42 4. This subsection does not obligate an underground facilities
43 operator of a sewer system to maintain, clean or unstop underground sewer
44 facilities owned by another person.

1 Sec. 3. Section 40-360.26, Arizona Revised Statutes, is amended to
2 read:

3 40-360.26. Damage of underground facility; liability to owner;
4 homeowner exemption

5 A. If any underground facility is damaged by any person in violation
6 of this article as a result of failing to obtain information as to its
7 location, failing to take measures for protection of the facilities or
8 failing to excavate in a careful and prudent manner, the person is liable to
9 the owner of the underground facility for the total cost of the repair of the
10 facility.

11 B. A homeowner OR HOMEOWNERS' ASSOCIATION engaging in excavating in an
12 express or implied private property utility easement across property owned by
13 the homeowner OR HOMEOWNERS' ASSOCIATION is not liable to the owner or
14 operator of the underground facility damaged by the homeowner OR HOMEOWNERS'
15 ASSOCIATION pursuant to this section if the damaged underground facility is
16 not buried or placed below ground in accordance with the applicable
17 standards, if the underground facility is not located within the easement or
18 if the homeowner OR HOMEOWNERS' ASSOCIATION engaged in the excavation has
19 complied with section 40-360.22. THIS SUBSECTION DOES NOT APPLY TO ANY
20 PERSON EMPLOYED BY A HOMEOWNER OR A HOMEOWNERS' ASSOCIATION INCLUDING A
21 CONTRACTOR LICENSED PURSUANT TO TITLE 32, CHAPTER 10 OR A PERSON ENGAGING IN
22 CONTRACTING WITHOUT A LICENSE AS PROHIBITED BY SECTION 32-1151.

APPROVED BY THE GOVERNOR APRIL 28, 2006.

FILED IN THE OFFICE OF THE SECRETARY OF STATE APRIL 28, 2006.